

of the Subordinate Judge's predecessor, to which he refers, appears to have been appealed against. It has been stated at the bar by the appellants' pleader to have been reversed, but there is not any evidence on that point. We, therefore, do not know what was the result of that appeal, and, for aught that appears to the contrary, that case may have been decided in the Court of first instance for want of the evidence of custom which exists in this case.

Again, even if the merits of this case were with the plaintiffs, which in our opinion they are not, their suit is completely defective for want of parties. None of the junior members of the family (who would be co-parceners if the plaintiffs' case be true) have been made parties to it. Further, these junior branches are holders of *potgi*; and, unless their *potgi* as well as that of the plaintiff were brought into hotchpot, no proper partition could be made. The plaintiff has not even offered to bring his *potgi* into hotchpot.

It might be a question whether, in the case of so stale a claim as that of the plaintiff, we could properly allow him to amend his plaint at this stage by adding parties.

It is unnecessary to decide that question, as, for the reasons already given, he must fail on the merits.

We reverse the decree of the Subordinate Judge, and direct the plaintiffs to pay to the defendants the costs of the suit and of this appeal, and dismiss the plaintiffs' claim.

*Decree accordingly.*

[APPELLATE CIVIL JURISDICTION.]

*Miscellaneous Regular Appeal No. 6 of 1874.*

KRISHNARA'V.....*Plaintiff and Appellant.*

June 15.

ANTA'JI VIRUPUKSHA .....*Defendant and Respondent.*

*Act VII. of 1870, Section 11—Additional stamp duty—Interest on decree.*

The Court Fees' Act (No. VII. of 1870), Section 11, is not applicable to interest accruing upon a decree in a suit which is neither for mesne profits nor for immoveable property, nor for an account, but simply an action for money lent.

1875. **T**HIS was a miscellaneous regular appeal from the order  
 KRISHNARÁV of C. H. Shaw, District Judge of Belgaum.

v.  
 ANTAJI  
 VIRUPUKSHA.

The facts of the case are briefly these :—

On the 8th of March 1875 a decree was passed by the High Court in Regular Appeal No. 11 of 1861 in favour of the appellants. The decree awarded payment, by the respondent to the appellants, of a certain amount of money lent by the latter to the former, together with interest from the date of suit up to the date of payment. The appellants made the present application to recover Rs. 34,092-3-0, being interest due on the said decree. The District Judge held that, under Act VII. of 1870, Section 11, the plaintiff was liable to pay additional stamp duty (Rs. 1,035) on the amount which he sought to recover, and made the following order :—

“The Court has no doubt that the intention of Section 11, Act VII. of 1870, is that only relief to the extent of the value covered by the decree can be afforded, and, if anything more is claimable, additional fees must be paid. Interest is a constantly accruing cause of action as much as mesne profits, and the difference of fees must be made up by petitioner. The Court, however, allows four months' delay, and accedes to the petitioner as to attachment of the crops, and directs that they be placed in deposit or the proceeds thereof.”

The appeal was heard by WESTROPP, C.J., and LARPENT, J.

*Manikshá Jehángirshá* for the appellants.

No one for the respondent.

WESTROPP, C.J. :—It appearing to the Court that Section 11 of Act VII. of 1870, upon which the District Judge has acted, is not applicable to interest accruing upon a decree in a suit—which suit was neither for mesne profits, nor for immoveable property and mesne profits, nor for an account, but simply an action for money lent—the Court reverses the order of the District Judge without costs. If the amount of stamp duty, charged by the District Judge under that section, has been lodged, the same should be refunded to the plaintiff.

*Order reversed.*